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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/539,024	03/30/2000	Steven G. Glassen	POU9-1999-0176-US1	7679

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EXAMINER
KING, JUSTIN

ART UNIT	PAPER NUMBER
2181	

DATE MAILED: 09/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/539,024	Applicant(s) GLASSEN ET AL.	
	Examiner Justin I. King	Art Unit 2181	

-- The MAILING DATE of this communication appears on the cover she t with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-54 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-54 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Specification

1. The attempt to incorporate subject matter into this application by reference to U.S. Patent No. 5,265,250 on page 16, line 9 is improper because the patent title is not matching with the patent number. Applicant may have meant the patent number 5,265,240.

Claim Objections

2. Claims 18 and 36 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 18 and 36 merely state the measurement data's inherent property according to its intended purpose.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galbraith et al. (U.S. Patent No. 5,265,240).

Referring to claims 1-2, 15, 18, 21-22, 33, 36, 39-40, 42-43, 50, and 52: Galbraith discloses a channel measurement method to obtain measurement data for a channel's components and to use the measurement data to determine the components' utilization (columns 1-3, column 4, lines 1-32, the device-level granularity). Galbraith discloses that it is known to measure each channel's component's connecting time (column 3, 1st paragraph) in a multiple OS shared resources environment. Hence, it would have been obvious to one having ordinary skill in the computer art at the time applicant made the invention to adapt Galbraith's teaching to measure the channel utilization because Galbraith teaches one to measure each individual component to obtain a more precise measurement and to arbitrate the resources accordingly.

Referring to claims 3-4, 16, 19, 23-24, 34-35, 37, 44-45, 51, and 53: Claims 3-4, 16, 19, 23-24, and 34-35, 37, 44-45, 51, and 53 are rejected over Galbraith as stated above; furthermore, an "Official Notice" is taken on the following: the basic I/O has the read operation and the write operation. Although the prior art does not explicitly mention the read and the write operation, these operations are inherent because they are the basic operations when a device is being accessed.

Referring to claims 5-6, 17, 25-26, and 46: Claims 5-6, 17, 25-26, and 46 are rejected over Galbraith as stated above; furthermore, Galbraith discloses the continuous measuring approach which may last a few seconds to several hours (column 2, lines 1-3), and Galbraith also

discloses a statistical technique (column 2, lines 21-26) that measures selected intervals among a plurality of predefined intervals. Galbraith discloses that it is known that the statistical technique does not provide an accurate continuous data as the first approach, but it reduces the system overhead. An "Official Notice" is taken on the following: although the prior art does not explicitly emphasize on the fluctuated utilization over the intervals and the fluctuation's associated percentage to the component's operational characteristics, it is known that the associated percentage is the indicator to the utilization; such that the percentage is a necessary information as part of the measurement; and it is also known that the fluctuation is an important data in statistical calculation, which it helps to provide a range where the true value will fall into (the statistic's mean value and μ value).

Referring to claims 7-10, 27-30, and 47: Claims 7-10, 27-30, and 47 are rejected over Galbraith as stated above; furthermore, since Galbraith discloses the measurement on each individual component, it is obvious that the measurement will be done based on each component's inherent properties. Such that the internal bus will be measured on its bus speed, the processor will be measured on its processing speed, and any external bus devices (for instance, the external SCSI devices) will be measured on its accessing speed. And the internal bus, external bus, and processor are common in every computer system.

Referring to claims 11-12, 20, 31-32, 38, 41, 48-49, and 54: Claims 11-12, 20, 31-32, 38, 41, 48-49, and 54 are rejected over Galbraith as stated above; furthermore, Galbraith discloses a plurality of logical partitions (column 4, lines 15-16) and Galbraith also discloses that it is known to measure the utilization for each logical partition (column 2, lines 6-14).

Referring to claims 13-14: Claims 13-14 are rejected over Galbraith as stated above; furthermore, Galbraith discloses the channel-path-measurement facility (column 1, lines 8-9) and a plurality of concurrently processed measurements (column 6, lines 60-62). In addition, Galbraith also discloses several different modes for the measuring instructions (column 12m, lines 8-21, column 13, lines 14-66). Thus, Galbraith discloses a plurality of measurement instructions concurrently executing in different modes.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin I. King whose telephone number is 703-305-4571. The examiner can normally be reached on Monday through Friday, 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Wong can be reached on 703-305-3477. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7239 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5631.

Justin King
September 2, 2002

PETER WONG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100